

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.

ORDER NO. 269

Served: June 6, 1963

IN THE MATTER OF:

Application of D. C. Transit)	
System, Inc., for a Certificate)	
of Public Convenience and)	
Necessity.)	Application No. 248

By application filed May 6, 1963, D. C. Transit System, Inc., seeks a certificate of public convenience and necessity authorizing the following operations:

Irregular Routes -- Charter Operations:

Passengers and their baggage in the same vehicle:

From Dulles International Airport to points and places in the Washington Metropolitan Transit Area, except those in the Commonwealth of Virginia, restricted to passengers having a prior movement by aircraft.

The application is apparently filed under the grandfather clause of Section 4(a), Article XII, Title II, of the Washington Metropolitan Area Transit Regulation Compact (Compact). In its application, D. C. Transit System, Inc., states that it was engaged in the performance of the transportation for which authority is sought, as of March 26, 1963.

Under Section 203(b)(7a), Part II of the Interstate Commerce Act, transportation of persons by motor vehicle when incidental to transportation by aircraft is exempt from the certificate requirements of said Act. Such transportation, however, is not exempt from the certificate requirements of the Compact. The applicant, in effect, contends that its operations from the Dulles International Airport, prior to March 26, 1963, were bona fide and legal under the aforementioned exemption of the Interstate Commerce Act. This contention assumes that this Commission had no jurisdiction over transportation to and from the Dulles International Airport prior to March 26, 1963. The Airport lies partly in Fairfax County and partly in Loudoun County, Virginia.

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On March 26, 1963, the Washington Metropolitan Area Transit Regulation Compact was amended to specifically include, by name, the Dulles International Airport, as part of the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District. The earliest date transportation by motor vehicle of the character for which authority is sought could have been rendered, was on November 17, 1962. This was the date on which the Dulles International Airport became operational. Under the original Compact before it was amended, the latest date on which an application for grandfather rights could have been filed was June 22, 1961. To be entitled to grandfather rights under the original Compact, the applicant had to prove to the satisfaction of the Commission that it was bona fide engaged in transportation by motor vehicle, for which authority was sought, as of March 22, 1961. The instant application having been filed on May 6, 1963, and it being alleged that transportation for which authority is sought was being performed as of March 26, 1963, it becomes necessary to determine whether or not D. C. Transit System, Inc., is entitled to a grandfather right by virtue of the amendment effectuated to the Compact on March 26, 1963. Stating the question in a different form, the sole issue to be decided in this case is whether or not the amendment to the Compact, effectuated on March 26, 1963, subjected to the Commission's jurisdiction for the first time that area encompassed by the Dulles International Airport. Section 1(a)(4), Article XII, Title II, of the Compact, prior to the March 26 amendments, read as follows:

"1. (a) This act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except --

* * *

(4) Transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District;"

The pertinent portion of Section 1(b), Article XII, Title II, of the Compact, prior to the amendment of the Compact on March 26, 1963, read as follows:

"(b) No transportation or person, otherwise subject to this Act, shall be exempt by reason of the fact that any part (not a major part as conditionally exempted by paragraph (a) (4) of this section) of the route between

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points in the Metropolitan District lies outside of the Metropolitan District;..."

The Commission has always construed the above language to mean that transportation by motor vehicle between the Dulles International Airport on the one hand and points and places within the Metropolitan District (except points in Virginia) on the other, was within the jurisdiction of the Commission. Section 5 of the original Congressional Consent legislation (PL 87-767) provided that Section 1(a) (4), Article XII, Title II of the Compact, must, within three years from the date of the Compact, be amended so as to clarify the language contained therein. Thus, in clarifying the above language by amendments to the Compact, the Commission undertook to include specifically within the Metropolitan District any territory that was previously included under such language. It is also important to note that the Commission did not seek to enact another grandfather clause under the amended Compact since it viewed the amendments as merely clarifying the existing jurisdiction of the Commission. Under the amended Compact, Section 1(a)(4), now reads as follows:

"1 (a). This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except --

* * *

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission."

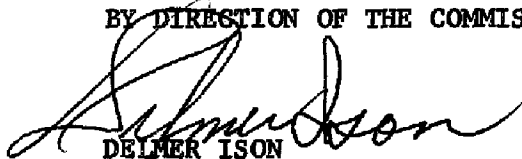
The quoted portion of Section 1(b), Article XII, Title II, of the Compact, above, was eliminated entirely from the amended Compact. Since the amendments to the Compact effectuated on March 26, 1963, did not,

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for the first time, subject to the jurisdiction of the Commission transportation to and from the Dulles International Airport, the Commission is of the opinion that the applicant, D. C. Transit System, Inc., is not entitled, under the grandfather provisions of the Compact, to the authority sought by the instant application. The Commission concludes as a matter of law that the applicant, D. C. Transit System, Inc., was not bona fide engaged in the transportation for which authority is herein sought on March 26, 1963, as alleged, or any time prior thereto.

THEREFORE, IT IS ORDERED that the application of D. C. Transit System, Inc., for a certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director